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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 1605

FRED B. BLACK, JR.,

Petitioner,

v.

SHERATON CORPORATION OF AMERICA, WASHINGTON SHERATON CORPORATION, and UNITED STATES OF AMERICA,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

REPLY BRIEF FOR PETITIONER

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A Memorandum in Opposition as short as that of the Solicitor General in this case, dealing not at all with the substantive issues raised in the petition, would ordinarily not warrant a reply. However, the Solicitor General states (Memorandum, p. 3) that the district court certified for interlocutory appeal its decision on the informer's privilege issue, but not its decision regarding *in camera* inspection, the implication being that the propriety of the *in camera* proceedings is not before the Court. To this the petitioner takes exception.

The basic thrust of petitioner's argument concerning the procedures in the court below is not that the district court erred in deciding to examine the Government's documents *in camera,* but in making its ultimate decision on the basis of the documents so viewed. Having examined the Government's documents *in camera,* the court could have, and petitioner maintains should have, excised from the pertinent documents the identity of any alleged informer, made those documents available to the petitioner, and ordered the Government to proceed with its showing on the record as to why such persons should be deemed informers, and why the privilege should apply.

While the petitioner saw no necessity for viewing extensive Government documents *in camera* in this case, the error raised on appeal is not the district court's decision to view the documents *in camera,* but the court's decision to base his ruling on the question before him on the information contained in those documents, without making them available to the petitioner for cross examination and rebuttal. Petitioner's contentions on this point were presented to the district court both in pleadings and oral argument, and the court's certification of his decision for interlocutory appeal certainly comprehended this issue.

Whether persons involved in electronic eavesdropping are informers, what procedures are to be followed by the district court on a claim of the informer's privilege in a case such as this, and whether parties who assist the Government in unlawful electronic eavesdropping are to be immune from civil liability are important questions, the resolution of which is necessary to the proper and orderly disposition of this case. The district court recognized that it would be costly, time consuming, and impractical for the court and the parties to conduct separate trials of these alleged joint tort-feasors. Accordingly, he certified his decision for interlocutory appeal.

The suggestion that the petitioner, a private citizen with limited resources, whose privacy was wrongfully invaded by

the Government and the hotel, should be compelled to go through two trials before his rights against the hotel are determined, merely because the Court of Appeals does not choose to face such questions at this time, should be rejected as contrary to an ordinary sense of fairness.

This is a proper case for interlocutory appeal, and the Court should grant review.

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